

AMENDED IN SENATE AUGUST 27, 2013

AMENDED IN SENATE JULY 3, 2013

AMENDED IN SENATE JUNE 20, 2013

AMENDED IN ASSEMBLY MARCH 19, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 640

Introduced by Assembly Member Hall

February 20, 2013

An act to add Section 6720 to the Labor Code, relating to ~~employee safety, and declaring the urgency thereof, to take effect immediately~~ *employment*.

LEGISLATIVE COUNSEL'S DIGEST

AB 640, as amended, Hall. ~~Employee safety: adult film industry: local regulation.~~ *Occupational safety and health: adult films.*

The California Occupational Safety and Health Act of 1973 establishes certain safety and other responsibilities of employers and employees. Violations of the act under certain circumstances are a crime.

This bill would require an employer engaged in the production of an adult film to adopt prescribed practices and procedures to protect employees from exposure to, and infection by, sexually transmitted diseases, including engineering and work practice controls, an exposure control plan, hepatitis B vaccinations, medical monitoring, and information and training on health and safety. The bill would define terms for those purposes. Because a violation of the act would be a

crime under certain circumstances, the bill would impose a state-mandated local program by creating a new crime.

This bill would provide that its provisions are severable.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

~~Existing law, the California Occupational Safety and Health Act of 1973, establishes the Division of Occupational Safety and Health for the purpose of ensuring safe and healthful working conditions for all Californians.~~

~~This bill would, notwithstanding any other law, authorize a city, county, or city and county to adopt and enforce a local ordinance that protects against the exposure of workers to blood or other potentially infectious materials during the filming or production of an adult film, as defined.~~

~~This bill would declare that it is to take effect immediately as an urgency statute.~~

~~Vote: $\frac{2}{3}$ -majority. Appropriation: no. Fiscal committee: ~~no~~-yes. State-mandated local program: ~~no~~-yes.~~

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 6720 is added to the Labor Code, to read:
- 2 6720. (a) The Legislature finds and declares that the protection
- 3 of workers in the adult film industry is the responsibility of multiple
- 4 layers of government, with the department being responsible for
- 5 worker safety and the county being responsible for protecting the
- 6 public health. Therefore, this section shall not be construed to
- 7 prohibit a city, county, or city and county from implementing a
- 8 local ordinance regulating the adult film industry, provided that
- 9 nothing in the local ordinance contradicts any provision of this
- 10 section.
- 11 (b) For purposes of this section, the following definitions shall
- 12 apply:
- 13 (1) "Adult film" means any commercial film, video, multimedia,
- 14 or other recorded representation during the production of which

1 performers actually engage in sexual intercourse, including oral,
2 vaginal, or anal penetration.

3 (2) “Employee” means a person who is an employee or
4 independent contractor, regardless of whether the person is shown
5 in the adult film, who, during the production of the adult film,
6 performs sexual intercourse, including oral, vaginal, or anal
7 penetration.

8 (3) “Employer” means a company, partnership, corporation,
9 or individual engaged in the production of an adult film. There
10 shall be a rebuttable presumption that the name on the material
11 for commercial distribution is the employer unless there is evidence
12 to the contrary as demonstrated through contractual or employment
13 records.

14 (4) “Sexually transmitted disease” or “STD” means any
15 infection commonly spread by sexual conduct, including, but not
16 limited to, HIV/AIDS, gonorrhea, syphilis, chlamydia, hepatitis,
17 genital human papillomavirus infection, and genital herpes.

18 (c) An employer shall maintain engineering and work practice
19 controls sufficient to protect employees from exposure to blood
20 and any potentially infectious materials, in accordance with Section
21 5193 of Title 8 of the California Code of Regulations. Engineering
22 and work practice controls shall include, but are not limited to,
23 the following:

24 (1) Simulation of sex acts using acting, production, and
25 postproduction techniques.

26 (2) Provision of and required use of condoms and other
27 protective barriers whenever acts of vaginal or anal intercourse
28 are filmed.

29 (3) The provision of condom-safe water-based or silicone-based
30 lubricants to facilitate the use of condoms.

31 (4) Plastic and other disposable materials to clean up sets.

32 (5) Sharps containers for disposal of contaminated sharps,
33 including, but not limited to, any blades, wires, or broken glass.

34 (d) An employer shall maintain an exposure control plan in
35 accordance with Section 5193 of Title 8 of the California Code of
36 Regulations. An employer shall not be required to comply with
37 any provision related to establishing and maintaining a sharps
38 injury log, or any provision regarding regulated waste.

39 (e) An employer shall make available the hepatitis B vaccination
40 and all medical followup required by Section 5193 of Title 8 of

1 *the California Code of Regulations, for any employee engaged in*
2 *the production of adult films, at the employer's expense.*

3 *(f) An employer shall designate a custodian of records for*
4 *purposes of this section. A copy of the original production shall*
5 *be retained by the custodian of records.*

6 *(g) An employer shall pay the costs of required medical*
7 *monitoring, such as STD testing, and keep confidential employee*
8 *records.*

9 *(h) (1) An employer shall adopt, implement, maintain, and*
10 *update, as required, a written health and safety program that meets*
11 *the requirements of the Injury and Illness Prevention Program*
12 *and the bloodborne pathogens standard, described, respectively,*
13 *in Sections 3203 and 5193 of Title 8 of the California Code of*
14 *Regulations.*

15 *(2) An employer shall provide a training program in accordance*
16 *with Section 5193 of Title 8 of the California Code of Regulations.*
17 *The training requirements of this subdivision may be satisfied by*
18 *proof that the employee has received appropriate training at*
19 *another workplace or from an appropriate third party approved*
20 *by the department in the prior 12 months.*

21 *(i) This section shall not be construed to require condoms,*
22 *barriers, or other personal protective equipment to be visible in*
23 *the final product of an adult film.*

24 *(j) The Legislature finds and declares that screening for STDs*
25 *is a critical public health measure and should be employed*
26 *wherever possible, including the adult film industry. Therefore,*
27 *this section shall not be construed to impede or replace STD*
28 *screening of all employees, as defined in paragraph (2) of*
29 *subdivision (b), pursuant to STD screening protocols established*
30 *by the federal Centers for Disease Control and Prevention, the*
31 *State Department of Public Health, and the public health*
32 *department in the county where the filming occurs.*

33 *SEC. 2. The provisions of this act are severable. If any*
34 *provision of this act or its application is held invalid, that invalidity*
35 *shall not affect other provisions or applications that can be given*
36 *effect without the invalid provision or application.*

37 *SEC. 3 No reimbursement is required by this act pursuant to*
38 *Section 6 of Article XIII B of the California Constitution because*
39 *the only costs that may be incurred by a local agency or school*
40 *district will be incurred because this act creates a new crime or*

1 *infraction, eliminates a crime or infraction, or changes the penalty*
2 *for a crime or infraction, within the meaning of Section 17556 of*
3 *the Government Code, or changes the definition of a crime within*
4 *the meaning of Section 6 of Article XIII B of the California*
5 *Constitution.*

6 SECTION 1. ~~Section 6720 is added to the Labor Code, to read:~~

7 6720. (a) ~~The Legislature finds and declares that the protection~~
8 ~~of workers in the adult film industry is the responsibility of multiple~~
9 ~~layers of government.~~

10 (b) ~~Notwithstanding any other law, a city, county, or city and~~
11 ~~county may adopt and enforce a local ordinance that protects~~
12 ~~against the exposure of workers to blood or other potentially~~
13 ~~infectious materials during the filming or production of an adult~~
14 ~~film.~~

15 (c) ~~For the purposes of this section, “adult film” means any~~
16 ~~commercial film, video, multimedia, or other representation during~~
17 ~~the production of which performers actually engage in sexual~~
18 ~~intercourse, including, but not limited to, oral, vaginal, or anal~~
19 ~~penetration, and including, but not limited to, any other sexual~~
20 ~~activity that may result in the transmission of blood or any other~~
21 ~~potentially infectious materials.~~

22 (d) ~~Violations of ordinances adopted pursuant to this section~~
23 ~~shall not be subject to penalties set forth in Chapter 4 (commencing~~
24 ~~with Section 6423).~~

25 SEC. 2. ~~This act is an urgency statute necessary for the~~
26 ~~immediate preservation of the public peace, health, or safety within~~
27 ~~the meaning of Article IV of the Constitution and shall go into~~
28 ~~immediate effect. The facts constituting the necessity are:~~

29 ~~In order to protect workers in the adult film industry from an~~
30 ~~imminent threat to public health as soon as possible, it is necessary~~
31 ~~that this act take effect immediately.~~